

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF VIRGINIA  
Newport News Division

FILED

JAN 19 2011

CLERK, U.S. DISTRICT COURT  
NORFOLK, VA

MISTY PETROSKY ELROD,

Plaintiff,

v.

ACTION NO. 4:09cv164

BUSCH ENTERTAINMENT CORPORATION,  
d/b/a WATER COUNTRY USA,  
and SANDEEP DEEPAK AGARWAL,

Defendants.

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JANE DOE #1, an infant then the age  
of eleven years, by  
SHANNON MIDDLETON, her mother  
and next friend,

Plaintiff,

v.

ACTION NO. 4:09cv165

BUSCH ENTERTAINMENT CORPORATION,  
d/b/a WATER COUNTRY USA,  
and SANDEEP DEEPAK AGARWAL,

Defendants.

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JANE DOE #2, an infant then the age  
of eleven years, by  
NAISSA ARAUJO, her mother  
and next friend,

Plaintiff,

v.

ACTION NO. 4:09cv166

BUSCH ENTERTAINMENT CORPORATION,  
d/b/a WATER COUNTRY USA,  
and SANDEEP DEEPAK AGARWAL,

Defendants.

## ORDER

This matter comes before the court on the motion of defendant Busch Entertainment Corporation ("BEC") to dismiss the Consolidated Plaintiffs' Amended Complaint filed on September 21, 2010. The Consolidated Plaintiffs responded in opposition on October 4, 2010, and BEC replied on October 12, 2010.<sup>1</sup> By order of October 13, 2010, pursuant to the provisions of 28 U.S.C. § 636(b)(1)(B) and Federal Rule of Civil Procedure 72(b), the matter was referred to a United States Magistrate Judge to conduct hearings, including any necessary evidentiary hearings, and to submit proposed findings of fact, if applicable, and recommendations for the motion's disposition.

After a hearing on November 23, 2010, the Report and Recommendation of United States Magistrate Judge Tommy E. Miller ("Report and Recommendation") was filed on December 14, 2010. The magistrate judge recommended granting BEC's motion to dismiss Counts II, III, IV and VI of the Amended Complaint.<sup>2</sup> The Consolidated Plaintiffs filed objections<sup>3</sup> to the Report and Recommendation on December 29, 2010, to

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<sup>1</sup> The Consolidated Plaintiffs objected to BEC's reply of October 12, 2010, arguing that it was untimely. The magistrate judge in his Report and Recommendation found that the reply was timely filed, and this court sees no reason not to adopt that conclusion.

<sup>2</sup> BEC did not move to dismiss Count I, claiming intentional infliction of emotional distress against BEC and defendant Agarwal, and Count V, claiming battery against BEC and defendant Agarwal, of the Amended Complaint, and thus this order does not have any effect as to those counts.


<sup>3</sup> The Consolidated Plaintiffs objected to the magistrate judge's

which BEC responded on January 12, 2011. The Consolidated Plaintiffs filed a reply on January 18, 2011.

The court, having examined the objections by the plaintiff to the Report and Recommendation and having made de novo finding with respect thereto, does hereby adopt and approve in full the findings and recommendation set forth in the Report and Recommendation of the United States Magistrate Judge filed December 14, 2010. Accordingly, BEC's motion to dismiss Counts II, III, IV and VI of the Amended Complaint is hereby **GRANTED**.

The Clerk is **DIRECTED** to send a copy of this Order to all counsel/parties in this case.

**IT IS SO ORDERED.**

/s/  
Rebecca Beach Smith  
United States District Judge 

Rebecca Beach Smith  
United States District Judge

Newport News, Virginia  
January 19, 2011

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findings with respect to Counts II, III, and IV, but conceded that Count VI should be dismissed.